

ORDER NO. 3907

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;  
Mark Acton, Vice Chairman;  
Tony Hammond; and  
Nanci E. Langley

Amendments to Ethics Rules

Docket No. RM2017-4

NOTICE OF PROPOSED RULEMAKING ON  
AMENDMENTS TO ETHICS RULES

(Issued May 19, 2017)

I. INTRODUCTION

The Postal Regulatory Commission (Commission) establishes a rulemaking docket to consider amending the Commission's ethics rules, 39 CFR subpart A of part 3000. The Commission proposes to delete its existing ethics rules to avoid duplication of 5 CFR part 2635 and those changes proposed to 5 CFR part 5601 by the Commission with the concurrence of the Office of Government Ethics (OGE).<sup>1</sup> This rulemaking also proposes to replace the deleted ethics rules with new rules that reflect the Commission's current regulatory role under the Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3198 (2006). The proposed rules

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<sup>1</sup> See Order No. 3906, Notice of Proposed Rulemaking on Amendments to Supplemental Standards of Ethical Conduct for Employees of the Postal Regulatory Commission, May 19, 2017.

aim to treat employees' and former employees' interactions with the Postal Service substantially the same as if those interactions were with entities that are not part of the federal government.

## II. BACKGROUND

### A. The Existing 39 CFR Subpart A of Part 3000

The ethics rules contained in 39 CFR subpart A of part 3000 were adopted in a 1971 rulemaking, in which the Civil Service Commission promulgated employee conduct regulations on the Commission's behalf.<sup>2</sup> In 1993, the Commission collaborated with OGE to revise the Commission's ethics rules in 39 CFR subpart A of part 3000. The ethics rules in 39 CFR subpart A of part 3000 retained "those portions of the current standards of conduct not superseded by [OGE's] amendments to title 5 of the Code of Federal Regulations and incorporate[d] provisions of the Supplemental Standards of Ethical Conduct for Employees of the Postal Rate Commission issued in 5 CFR part 5601 with the concurrence of [OGE]."<sup>3</sup> The Commission amended the ethics rules in 2001 to eliminate a redundant provision.<sup>4</sup>

In 2006, the PAEA made several changes to the Commission's regulatory role. Specifically, the PAEA eliminated the responsibility to adjudicate omnibus rate cases each year, which set rates for all Postal Service products.<sup>5</sup> Instead, under the PAEA the Commission, among other responsibilities, approves or denies discrete Postal

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<sup>2</sup> See 36 FR 5412 (Mar. 23, 1971).

<sup>3</sup> 58 FR 42873 (Aug. 12, 1993).

<sup>4</sup> 66 FR 32544 (Jun. 15, 2001).

<sup>5</sup> Pub. L. 109-435, 120 Stat. 3198, sections 201-202 (2006) (amending 39 U.S.C. 3621-3622 (2005) and repealing sections 3623-3624).

Service requests to change rates of market dominant products or competitive products.<sup>6</sup> Proposed rate changes include requests to change rates of general applicability, e.g., retail rates available to the public, and rates not of general applicability, e.g., negotiated service agreements (NSAs) with private parties. See *id.* Post-PAEA, the Commission must make an Annual Compliance Determination report concerning whether the rates or fees in effect for the year satisfied statutory and regulatory requirements and whether any service standards in effect during the year were not met. See 39 U.S.C. 3653(b).

In 2007, the Commission amended its ethics rules to reflect the renumbering of its statutory authority and revised the agency's name due to the enactment of the PAEA. In 2016, the Commission amended its ethics rules to redesignate the numbering to be consistent with the Federal Register Document Drafting Handbook and to correct the listed authority.<sup>7</sup> Neither amendment modernized the Commission's ethics rules to reflect the PAEA's enhancements to the Commission responsibilities.

#### B. Other Existing Ethics Laws and Rules

There are several government wide ethics rules and laws that do not apply in certain instances involving intra-federal government interactions because of the acknowledgment of a low probability of ethical problems arising in those settings. However, while the Postal Service is also a federal government entity, it regularly appears in dockets before the Commission requesting relief on certain matters (either of its own volition or because the law mandates the Postal Service seek relief or permission from the Commission depending on the issue). This situation presents the appearance of, if not actual, conflicts that would occur in any other scenario if the Postal Service were a non-federal government entity, and for which these types of rules were

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<sup>6</sup> The PAEA introduced the division of Postal Service products into market dominant products (products delivered under the Postal Service monopoly) and competitive products (all other products). 39 U.S.C. 3621-3622 and 39 CFR part 3010 (regulation of rates for market dominant products); 39 U.S.C. 3631-3634 and 39 CFR part 3015 (regulation of rates for competitive products).

<sup>7</sup> 81 FR 42534, 42540 (Jun. 30, 2016).

intended to apply. But for the Postal Service's status as a federal government entity, the same ethics restrictions would apply. These changes are aimed at fixing this unintended consequence.

Existing 5 CFR part 2641 and 18 U.S.C. 207 are post-employment restrictions applicable to former federal employees, including Commission employees. There are certain exceptions to these post-employment restrictions, such as former Commission employees working for a different agency in the executive branch. See 39 U.S.C. 207(j)(1); 39 CFR 2641.301(a). Therefore, 5 CFR part 2641 or 18 U.S.C. 207 does not appear to apply to former Commission employees working for the Postal Service.

Existing § 2635.604 and proposed § 5601.103 of title 5<sup>8</sup> require Commission employees seeking non-federal employment to provide notice of disqualification from particular Commission matters. Therefore, § 2635.604 and proposed § 5601.103 of title 5 do not appear to apply to a Commission employee seeking employment with the Postal Service.

Subpart B of 5 CFR part 2635 restricts Commission employees from accepting gifts from sources outside the federal government. Subpart C of 5 CFR part 2635 restricts Commission employees from accepting gifts from a lower-paid employee or giving gifts to an official superior. Therefore, in most cases, neither subpart would prohibit a Commission employee from accepting a gift from the Postal Service or a Postal Service employee since the Postal Service is part of the federal government.

### III. SUMMARY OF THE PROPOSED REGULATORY CHANGES

The Commission proposes to revise its existing ethics rules for several reasons. To avoid duplication of 5 CFR part 2635 and the proposed 5 CFR part 5601,<sup>9</sup> the

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<sup>8</sup> The Commission, with the concurrence of OGE, proposes to amend 5 CFR part 5601. See *supra* n.1.

<sup>9</sup> See *supra* n.1.

Commission proposes to delete the text and titles of existing §§ 3000.5, 3000.10, 3000.15, and 3000.20.

To reflect the substantial changes to the Commission's regulatory role after the 2006 enactment of the PAEA, which placed the Commission in the unique position of directly regulating the Postal Service, a federal agency, the Commission proposes new ethics rules that will treat employees' interactions with the Postal Service substantially the same as if those interactions were with private entities. The proposed ethics rules are intended to protect the integrity of the Commission's programs and processes and maintain public confidence that Commission employees are fulfilling their duties impartially and objectively. The proposed ethics rules reflect lessons learned through the Commission's experiences with the existing ethics rules.

#### IV. SECTION-BY-SECTION ANALYSIS OF THE PROPOSED CHANGES TO 39 CFR SUBPART A OF PART 3000

The rules in 39 CFR subpart A of part 3000 apply only to Commission personnel and former Commission personnel.

##### A. Section 3000.5

*The deletion of the existing language of § 3000.5.* Because the text of the existing § 3000.5 is redundant to proposed § 5601.101(a) of title 5,<sup>10</sup> the Commission proposes deleting the existing text and title of § 3000.5.

*Proposed § 3000.5 Post-employment restrictions.* Federal employees, including Commission employees, may not contact an employee of any federal agency or court on behalf of another person or entity concerning an official matter with which the former employee was involved as a government employee. See 18 U.S.C. 207(a)(1). Federal employees, including Commission employees, may not contact an employee of any federal agency or court on behalf of another person or entity concerning an official

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<sup>10</sup> See *supra* n.1.

matter that was pending under the former employee's official responsibility during the last year of his or her federal government employment. See 18 U.S.C. 207(a)(2). Neither restriction applies to former Commission employees that subsequently work for the Postal Service.

Because Commission employees obtain specific technical knowledge and skills in the course of their employment that may advantage a subsequent employer, including the Postal Service, and may disadvantage the Commission and the public, the Commission proposes to add post-employment restrictions that are applicable to all employers, including the Postal Service. The Commission proposes retitling § 3000.5 of title 39 as post-employment restrictions.

Paragraph (a) of proposed § 3000.5 would prohibit any former employee of the Commission from practicing or acting as an attorney, expert witness, or representative in connection with any proceeding or matter before the Commission that the former employee handled, advised, or participated in the consideration of while working at the Commission. Paragraph (b) of proposed § 3000.5 would prohibit any former employee of the Commission, for one year after leaving the Commission, from practicing or acting as an attorney, expert witness, or representative in connection with any proceeding or matter before the Commission that was under the former employee's official responsibility as defined in 18 U.S.C. 202(b).

Paragraph (a) of § 3000.5's permanent ban on such participation in particular matters and Paragraph (b) of § 3000.5's one year ban on participation in matters under official responsibility applies to the former employee's practice or action before the Commission on behalf of any participant, including the Postal Service. The proposed § 3000.5 does not reduce any responsibilities imposed upon former government employees under any other applicable law including executive orders, such as Executive Order No. 13490, 74 FR 4673 (Jan. 26, 2009); statute, such as 18 U.S.C. 207; or other regulations, such as 5 CFR part 2641.

B. Section 3000.10

*The deletion of the existing language of § 3000.10.* Because the text of the existing § 3000.10 is redundant to 5 CFR part 2638, the Commission proposes deleting the existing text and title of § 3000.10.

*Proposed § 3000.10 Additional required notification of disqualification when seeking employment.* Existing § 2635.604 of title 5 requires federal employees, including Commission employees, to recuse themselves from participating in matters that may directly and predictably affect the financial interest of a prospective employer. Proposed § 5601.103 of title 5 specifies the procedure for Commission employees to provide notice.<sup>11</sup> Federal employees, including Commission employees, required to file public financial disclosure reports (OGE form 278(e)), must comply with additional notification requirements set forth in § 2635.607 of title 5 and the Stop Trading on Congressional Knowledge Act of 2012.<sup>12</sup> None of these requirements apply to former Commission employees that seek employment with the Postal Service. However, a Commission employee seeking employment with the Postal Service may experience an actual or an appearance of a conflict of interest between his or her subsequent employment prospects and current work.

Therefore, the Commission proposes to require its employees who seek employment with the Postal Service to provide notice of disqualification consistent with the rules applicable to seeking non-federal employment. The Commission proposes retitling § 3000.10 as “additional required notification of disqualification when seeking employment.” Proposed paragraph (a) of § 3000.10 would require a Commission employee seeking employment with the Postal Service to provide notice consistent with proposed § 5601.103(a) of title 5. Proposed paragraph (b) of § 3000.10 permits the

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<sup>11</sup> See *supra* n.1.

<sup>12</sup> See Pub. L. 112-105, 126 Stat. 291, 303-04, section 17 (2012).

employee to withdraw notice of disqualification consistent with proposed § 5601.103(b) of title 5.

C. Section 3000.15

*The deletion of the existing language of § 3000.15.* Because the text of the existing § 3000.15 is redundant to the proposed § 5601.102 of title 5,<sup>13</sup> the Commission proposes deleting the existing text and title of § 3000.15.

*Proposed § 3000.15 Additional restriction on gifts.* Executive Order No. 11570, as amended by Executive Order No. 12107, requires Commission regulations to prohibit the receipt of anything of value by a Commission employee “from an individual or organization having, or likely to have, business with the Commission.”<sup>14</sup>

Unless an exception applies, federal employees, including Commission employees, generally may not accept gifts that are given because of their official positions or that come from certain prohibited sources. 5 CFR 2635.202(a). The definition of “gift” excludes “[a]nything which is paid for by the Government.” 5 CFR 2635.203(b)(7). Therefore, even though the Postal Service regularly appears before and seeks relief from the Commission, things of value given by the Postal Service to Commission employees are not considered gifts under the existing regulations. By contrast, § 2635.202(a) of title 5 generally prohibits acceptance of gifts that come from non-federal government entities that regularly appear before or seek relief from the Commission.

The Commission proposes revising § 3000.15 to similarly prohibit a Commission employee from accepting a gift from the Postal Service unless first permitted by an exception or exclusion contained in § 2635 other than § 2635.203(b)(7) of title 5. The Commission proposes to retitle § 3000.15 as “additional limitation on acceptance of

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<sup>13</sup> See *supra* n.1.

<sup>14</sup> See Executive Order No. 11570, 35 FR 18183 (Nov. 24, 1970); Executive Order No. 12107, 44 FR 1055 (Dec. 28, 1978).



anything of value.” The Commission believes that proposed § 3000.15 is consistent with Executive Order No. 11570, as amended by Executive Order No. 12107.

D. Section 3000.20

*The deletion of the existing language of § 3000.20.* Because the text of the existing section 3000.20 is redundant to the proposed §§ 5601.104(a) and (b) and 5601.103(a) of title 5,<sup>15</sup> the Commission proposes deleting the existing text and title of § 3000.20.

*Proposed § 3000.20 Reserved.* The Commission proposes to reserve § 3000.20.

V. SECTION-BY-SECTION ANALYSIS OF THE PROPOSED CHANGES TO THE TITLE IDENTIFIED IN SUBCHAPTER A OF CHAPTER III OF TITLE 39

*Title identified in subchapter A of chapter III of title 39.* The Commission proposes removing the existing heading “Subchapter A—Personnel” from chapter III of title 39. The existing heading is incorrect because several parts of subchapter A of chapter III of title 39 do not relate to personnel. Further, the existing heading is unnecessary because there are no additional subchapters within chapter III of title 39.

VI. ADMINISTRATIVE ACTIONS

The Commission establishes Docket No. RM2017-4 for consideration of matters raised by this Order. Additional information concerning this rulemaking may be accessed via the Commission’s website at <http://www.prc.gov>. Interested persons may submit comments no later than 30 days from the date of the publication of this notice in the *Federal Register*. Pursuant to 39 U.S.C. 505, Samuel M. Poole is designated as an

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<sup>15</sup> See *supra* n.1.

officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

## VII. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission establishes Docket No. RM2017-4 for consideration of the matters raised by this Order.
2. Interested persons may submit comments no later than 30 days from the date of the publication of this notice in the *Federal Register*.
3. Pursuant to 39 U.S.C. 505, the Commission appoints Samuel M. Poole to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Stacy L. Ruble  
Secretary

## **List of Subjects in 39 CFR Part 3000**

Conflict of interests.

For the reasons discussed in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

### **CHAPTER III—POSTAL REGULATORY COMMISSION**

1. Revise Chapter III by removing subchapter A title SUBCHAPTER A—PERSONNEL.

#### **Part 3000—STANDARDS OF CONDUCT**

2. The authority citation for part 3000 continues to read as follows:

**Authority:** 39 U.S.C. 503; 504, 3603; E.O. 12674; 54 FR 15159; 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 56 FR 42547, 3 CFR, 1990 Comp., p. 396, 5 CFR parts 2634 and 2635.

3. Revise subpart A of part 3000 to read as follows:

#### **Subpart A—General Provisions**

Sec.

3000.5 Post-employment restriction.

3000.10 Additional required notification of disqualification when seeking employment.

3000.15 Additional restriction on gifts.

3000.20 [Reserved]

#### **§ 3000.5 Post-employment restrictions.**

All former employees of the Postal Regulatory Commission (Commission) are subject to the following restrictions on appearance and practice before the Commission on behalf of any participant, including the United States Postal Service (Postal Service):

(a) No former employee of the Commission may practice or act as an attorney, expert witness, or representative in connection with any proceeding or matter before the Commission that the former employee has handled, advised, or participated in the consideration of while in the service of the Commission.

(b) No former employee of the Commission may within 1 year after his or her employment has ceased, practice before or act as an attorney, expert witness, or representative in connection with any proceeding or matter before the Commission that was under the official responsibility of such individual, as defined in 18 U.S.C. 202(b), while in the service of the Commission.

**§ 3000.10 Additional required notification of disqualification when seeking employment.**

(a) An employee that seeks employment with the Postal Service must provide written notice to the Designated Agency Ethics Official (DAEO) consistent with § 5601.103(a) of title 5.

(b) An employee may withdraw written notice under paragraph (a) of this section consistent with § 5601.103(b) of title 5.

**§ 3000.15 Additional limitation on acceptance of anything of value.**

Regardless of § 2635.203(b)(7) of title 5, a Commission employee may not accept a gift from the Postal Service, unless another exception or exclusion to § 2635.203 of title 5 applies or a waiver is granted by the DAEO.

**§ 3000.20 [Reserved]**